



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The Official Report of the Proceedings of the East African Legislative Assembly

FIFTH MEETING – SECOND SESSION – THIRD ASSEMBLY

Tuesday, 1 April 2014

The East African Legislative Assembly met at 3:44 p.m. in the EALA Chambers, EAC Headquarters, Arusha, Tanzania

PRAYER

(The Speaker, Ms. Margaret Nantongo Zziwa, in the Chair)

(The Assembly was called to order)

MOTION FOR A RESOLUTION OF THE ASSEMBLY TO REMOVE THE SPEAKER FROM OFFICE

Mr. Peter Mathuki (Kenya): Madam Speaker, I move that this Assembly, pursuant to the provisions of Rule 9 of the Rules of Procedure of the Assembly, do resolve to remove the Speaker from the office - *(Interruption)* -

Mr. Fred Mukasa-Mbidde (Uganda): Procedure, Madam Speaker.

The Speaker: Procedure?

Mr. Mukasa-Mbidde (Uganda): Madam Speaker, I move on a point of procedure. This august House has Rules of Procedure regarding motions, and substantially, Rule 9 of the Rules of Procedure regarding motions for the removal of the Speaker, the process that should be followed, and we have injunctive procedures, particularly Rule 43 of the Rules of Procedure of this august House.

Madam Speaker, this motion is currently under court scrutiny under Reference No. 3 and Application No. 5 of 2014 before the East African Court of Justice.

Madam Speaker, this august House follows the law and the rule on *sub judice* applies with equal force to this august House.

Madam Speaker, I rise on this point of procedure because this is the only time when legal services are required for those that took oath to protect the Treaty. I took this oath, Madam Speaker, on the first day of my arrival in the Assembly – *(Interruption)* -

Mr. Kiangoi: Point of Order - *(Interruption)* -

Mr. Mbidde: Madam Speaker, with your protection – *(Interruption)* -

The Speaker: Order!

Mr. Mbidde: Madam Speaker, the process envisaged for purposes of moving this kind of motion – *(Interruption)* -

The Speaker: Hon. Mbidde -

Mr. Mbidde: This process has been placed under scrutiny before the court. Madam Speaker, it is my submission that you give a wise ruling under Rule 82 sub-rule (2) to give direction to this August House. *(Interjection)*

Mr. Kiangoi: I stand on a point of procedure, Madam Speaker.

The Speaker: Procedure or Order? Did I hear order or procedure? If its procedure, let me first hear – *(Interruption)* -

Mr. Kiangoi: Madam Speaker, is the honourable Member in order to invoke the Rules of Procedure in order to stop proceedings of this House when there is a clear understanding without invoking sub-rule (6) of Rule 9? Would he be in order to bring up an issue in which case Madam Speaker then we would invoke Rule 9 sub-Rule (6)? Madam Speaker, I beg that we don't move in that direction.

The Speaker: You put it in a question, sorry. Anyway, you had risen on order, and my understanding is that the member moved because a motion, which he imagines or he feels is *sub judice*, has been raised or anticipated. That is why I thought you would have waited for him and then we make a ruling.

Mr. Kiangoi: Madam Speaker, you may be called upon to make a decision on this matter and this matter concerns the removal of the Speaker. Madam Speaker, I urge you not to put yourself in that position. Let me disclose that we have agreed on the mode of procedure on this issue. Let us follow that procedure and complete the business we have before us. *(Applause)*

(Mr Mbidde stood in his place)

The Speaker: Hon. Mbidde, I thought you had concluded?

Mr. Mbidde: Madam Speaker, I was actually perturbed by the point of order, which has been oscillating between procedure and order from the honourable Member.

Madam Speaker, there is no other procedure that can be adopted before this honourable House other than the procedure laid down in the Rules of Procedure. I stand to correct this House to follow the rules of procedure applicable in these circumstances. Madam Speaker, I invoke your wise ruling under Rule 82 sub-rule (2) for purposes that this august House pend this motion until the determination of the case before the East African Court of Justice.

The Speaker: Hon. Kaahwa, I was looking at what hon. Mbidde...perhaps before you come in, 82(2) "*Should doubt arise over the application or interpretation of these rules, or where any matter is not expressly provided for by these Rules or any other law, that question shall be decided by the Speaker,*" and I am now going to rule.

Mr. Mathuki: I had not finished Madam Speaker.

The Speaker: I am going to rule because now it is the Speaker who is going to decide on her motion.

Mr. Mathuki: No, Madam Speaker. I had not moved - (*Interruption*)-

The Counsel to the Community (Mr. Wilbert Kaahwa)(Ex-Officio): Madam Speaker, if you allow me as the Counsel to the East African Community, which includes this important organ, the East African Legislative Assembly, I will throw light on what is at stake as raised by my honourable friend, Mukasa Mbidde, before you decide the question.

Madam Speaker, hon. Mbidde is referring this august House to the rules on *sub judice*. It is true that a matter has been filed in Court against the Attorney General of Uganda and the Secretary General of the East African Community. Now, once a matter is in court, the Treaty provides on how to handle it and I am going to read the relevant Article before I come to the cited Rule 43.

Madam Speaker, the Article that my honourable friend is alluding to is Article 38 Paragraph (2) of the Treaty. And for the avoidance of doubt I will read it out - (*Interruption*) -

Mr. Mbidde: Is it in order, Madam Speaker, for the Senior Counsel to cite an Article I have not cited anywhere in my submission and allege thereby that it is the Article I am relying on for my submissions?

The Speaker: Perhaps he wanted to guide the House. That's the way I can understand it.

Mr. Kaahwa: Madam Speaker, I am the Counsel to the East African Community, and I want to guide this House proudly as the Counsel to the Community should. I didn't say that hon. Mbidde cited the article, I said he alluded to it by his reference to the principle of *sub judice*, and I am saying that *sub judice* is a matter reflected upon in Article 38 paragraph (2) of the Treaty, which reads as follows: "*Where a dispute has been referred to the Council or the Court, the Partner*

States shall refrain from any action, which might be detrimental to the resolution of the dispute, or might aggravate the dispute”

Number one, it is addressing the Partner States, - (*Applause*) - it is not addressing any of the organs or institutions of the Community. Secondly, this provision on the *sub judice* rule does not have automatic operation. The power to issue injunctive orders rests with the court, pending any issue of an injunctive order. Article 38 paragraph (2) does not have automatic injunctive orders - (*Applause*).

Madam Speaker, to back up my view is a decision of the East African Court of Justice, in Application No.5 of 2012, where the parties were Timothy Alvin Kahoho versus the Secretary General of the EAC. Madam Speaker, that application was brought under Article 38(2) of the Treaty – (*Interruption*) -

The Speaker: Rt. hon. Counsel to the Community, if I can address you like that, hon. Mbidde said that he never referred to it; you said he alluded to it. Now you are quoting what is in court. I think we should not proceed that way. I think let us proceed by the way how we are on the motion so that we are able to proceed. It helps us. Otherwise, if we start to invoke what is in court, then it will be your word against his.

Mr. Kaahwa: I stand guided by your ruling, Madam Speaker, but allow me to table a copy of the ruling in court because it shows that Article 38 is not of automatic – (*Interruption*) -

Ms. Susan Nakawuki: Procedure, Madam Speaker.

Mr. Kaahwa: Madam Speaker, can I proceed?

The Speaker: Proceed.

Mr. Kaahwa: Madam Speaker, my honourable friend, Mbidde also cited Rule 43 of the Rules of Procedure. According to Rule 43 paragraph (1)... Rule 43 is about content of speeches. In other words, it comes into play when you have speeches within the proceedings, - (*Applause*) - and it reads as follows: “*reference shall not be made to any matter of which judicial decision is pending in such a way as may, in the opinion of the Speaker, prejudice the interest of any party to the action*”. As of now, immediately after hon. Mathuki moved the motion, in my own humble opinion, I did not see or imagine any speech by which you will be required to make a ruling. There was no speech in which reference was made to any matter in court.

Madam Speaker, with that I would like to guide you before you apply Rule 82, to rule on this matter, that there is nothing which is *sub judice*, and there is nothing which is pending in court which would - (*Applause*)- (*Interruption*) -

Mr. Mbidde: Clarification Madam Speaker!

The Speaker: He is seeking your clarification. Are you taking it?

Mr. Kaahwa: Madam Speaker, I fear I may be derailed.

The Speaker: I will give you a chance to contribute substantively

Mr. Kaahwa: I am about to finish.

The Speaker: Proceed.

Mr. Kaahwa: All I have said is that under the *sub judice* rule, which hon. Mbidde referred to, and under Rule 43 on contents of speeches in which reference may not be made to any matter pending a judicial decision, the House has not reached a stage where both rules become applicable. Hon. Mathuki is just moving a motion, and I would encourage Madam Speaker to overrule the objection. I thank you. (*Applause*)

Mr. Mathuki: Clarification, Madam Speaker

The Speaker: Hon. Mathuki, you gain a lot if we allow this debate, otherwise your motion may not see the light of the House.

Mr. Mbidde: Madam Speaker, the Rule on *sub judice* that I raised, I maintain, was premised on Article 38 clause (2) as the Counsel to the Community has stated before this honourable House. However, it has the import in Rule 43, where all motions for debate, either before this House or before any Committee designated for that matter and according to particulars for reference, would include particulars that are for inquisition before court.

Madam Speaker, I also beef up this argument with a copy of the reference that was decided by the East African Court of Justice, Ref No. 6 of 2011, where in the judgment the statement of the Counsel to the Community who was in this matter, hon. Kaahwa. It was stated, Madam Speaker, that the learned Counsel in support of his submission on this point also relied on a case of the European Parliament Vs the Council of European Community, where the European Court of Justice intervened in a matter where parliamentary procedures were infringing the European Community Treaty.

Madam Speaker, I subscribe to this view. It was a view by my Rt. hon. Counsel, and I am sure he still subscribes to the same.

Madam Speaker, matters are still before the East African Court of Justice, and what is before the East African Court of Justice is a procedure of this House under Rule 9. We cannot continue handling the same procedure, which procedure is under inquiry by the East African Court of Justice, Madam Speaker.

The Speaker: Since we are the custodians of the laws, I think let us proceed by not moving on this motion. I beg – (*Interruption*) -

Hon. Members: No! No!

The Speaker: Let us not move on this motion because – (*Interruption*) -

Mr. Mathuki: Madam Speaker – (*Interruption*) –

(Some honourable Members stood in their places)

The Speaker: when I have five people on the floor, I do not know how to proceed. But as I read for you Rule 82(2), “*Should doubt arise over the application or interpretation of these rules, or where any matter is not expressly provided for by these rules or any law, that question shall be decided by the speaker*”. I am seeing two counsels, three counsels, or five counsels already conflicting on the floor of this House. So, it becomes difficult for the Speaker. The best I have to say is that he maintains that this case is in Court – (*Interruption*) -

Mr. Mathuki: Madam Speaker - (*Interjections*) - I hadn't - (*Interjections*) - Madam Speaker, with due respect – (*Interruption*) -

The Speaker: I thought I was ruling on this so that we are able to proceed, but if you want, I think I will just go and invoke Rule 12(2) and we stop today.

Mr. Kiangoi: Order Madam Speaker – (*Interruption*) -

Mr. Mathuki: I had wanted Madam Speaker - (*Interruption*) -

Ms. Susan Nakawuki: Madam Speaker, you have ruled!

The Speaker: House stands adjourned *sine die*.

(The House rose at 4:03 p.m. and adjourned sine die.)